

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of Applications of	)	
	)	
BURLINGTON COLLEGE	)	File Nos. 0005226033, 0005226029
	)	
For Renewal of License for Educational	)	
Broadband Service Stations WLX608 and	)	
WLX609	)	
	)	

**ORDER ON RECONSIDERATION**

**Adopted: December 10, 2012**

**Released: December 10, 2012**

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. In this *Order on Reconsideration*, we grant a petition for reconsideration and reinstate two renewal applications that had been dismissed for failure to respond to notices of return. While the original dismissals were correct, we find that the public interest would best be served by reinstating the renewal applications and allowing the licensee to provide educational broadband services.

**II. BACKGROUND**

2. Burlington College, Burlington, Vermont (“Burlington”) operates Educational Broadband Service (“EBS”) Stations WLX608 and WLX609 (the “Stations”) on the B-group channels.<sup>1</sup> Both Stations were timely constructed by North Cloud, Burlington’s commercial partner.<sup>2</sup> For Station WLX608, North Cloud constructed a ten-megahertz point-to-point link connecting Ripton Elementary School with the North Branch Networks network operating center.<sup>3</sup> For Station WLX609, North Cloud constructed a twenty-megahertz point-to-point link connecting Isle La Motte Elementary School with the GlobalNet Internet Services network operations center.<sup>4</sup> The licenses for the Stations expired on July 24, 2012.<sup>5</sup> Burlington was required to file a renewal application in the 90-day period prior to July 24, 2012.<sup>6</sup> In addition, after having been granted a 90-day extension of time to construct, Burlington was required to demonstrate that it was providing substantial service on or before February 1, 2012.<sup>7</sup> Burlington met both

<sup>1</sup> File Nos. 0005073711, 0005073715.

<sup>2</sup> File Nos. 0005073711, 0005073715 (filed Feb. 14, 2012) (“Construction Notifications”).

<sup>3</sup> Petition for Reconsideration, Burlington College (filed Oct. 12, 2012) (“Petition”) at 2.

<sup>4</sup> *Id.*

<sup>5</sup> See File Nos. 0003033014, 0003033016 (granted June 17, 2009).

<sup>6</sup> See 47 C.F.R. § 1.949(a).

<sup>7</sup> EBS licensees were required to demonstrate substantial service on or before November 1, 2011. See National EBS Association and Catholic Television Network, *Memorandum Opinion and Order*, 26 FCC Rcd 4021 (WTB 2011). On November 1, 2011, Burlington requested a 90-day extension of time to construct, which was granted on December 19, 2011. File Nos. 0004935543, 0004935544 (filed Nov. 1, 2011) (“Extension Requests”).

requirements: it filed applications to renew the licenses for the Stations on May 21, 2012<sup>8</sup> and construction notifications on February 14, 2012.<sup>9</sup>

3. The Wireless Telecommunications Bureau (“Bureau”) accepted Burlington’s construction notifications on March 13, 2012.<sup>10</sup> The Bureau returned the Renewal Applications on July 17, 2012<sup>11</sup> because Burlington was required to file FCC Form 602, which requires applicants to disclose the owners of wireless stations.<sup>12</sup> The Notices of Return informed Burlington that it must respond within 60 days of the date of the Notice of Return.<sup>13</sup> Thus, Burlington was required to respond to the renewal applications Notices of Return on or before September 17, 2012. Burlington did not do so, and therefore the Bureau dismissed Burlington’s Renewal Applications.<sup>14</sup> The next day, on October 11, 2012, Burlington filed FCC Form 602.<sup>15</sup> On October 12, 2012, Burlington sought reconsideration of the Commission’s decision to dismiss the Renewal Applications.<sup>16</sup>

### III. DISCUSSION

4. In this case, Burlington failed to respond to the Renewal Applications Notice of Return letters on or before September 17, 2012, 60 days after the Notices of Return were sent. Under Section 1.934(c) of the Commission’s Rules, an application may be dismissed when the applicant fails “to respond substantially within a specified time period to official correspondence or requests for additional information.”<sup>17</sup> The Bureau sends a Notice of Return to applicants when additional information is necessary for the Bureau to process the application. The Notice of Return plainly states that “[i]f you do not file an amendment to your application within 60 days of the date on the top of this letter, your application will be dismissed.”<sup>18</sup> Burlington was placed on notice that its Renewal Application would be dismissed if it failed to respond to the return letters. Burlington failed to respond and does not offer any legitimate explanation for its failure. Accordingly, we conclude that the dismissal of Burlington’s Renewal Applications was proper.

5. The pertinent question before us, however, is whether to reinstate Burlington’s Renewal Applications on reconsideration. While there is precedent for refusing to reinstate renewal applications when an applicant fails to offer a justification for failing to respond to a return letter,<sup>19</sup> based upon the totality of the circumstances involved in this case, we believe the public interest would best be served by

<sup>8</sup> File Nos. 0005226029, 0005226033 (filed May 21, 2012) (“Renewal Applications”).

<sup>9</sup> File Nos. 0005073711, 0005073715 (filed Feb. 14, 2012) (“Construction Notifications”). Under Section 1.946(d) of the Commission’s Rules, licensees are given 15 days after the construction deadline to file the construction notification. 47 C.F.R. § 1.946(d).

<sup>10</sup> Construction Notifications (accepted Mar. 13, 2012).

<sup>11</sup> Notices of Return, Ref. Nos. 5411629, 5411630 (Jul. 17, 2012) (“Notices of Return”) at 1-2.

<sup>12</sup> See 47 C.F.R. § 1.913(a)(2).

<sup>13</sup> Notices of Return at 1.

<sup>14</sup> Notices of Dismissal, Ref. Nos. 5456456, 5456457 (Oct. 10, 2012). The Bureau gave public notice of the dismissal of the Renewal Applications on October 10, 2012. See Wireless Telecommunications Bureau Market-Based Applications Action, Report No. 8141, *Public Notice* (Oct. 10, 2012) at 2.

<sup>15</sup> File No. 0005443996 (filed Oct. 11, 2012).

<sup>16</sup> Petition.

<sup>17</sup> 47 C.F.R. § 1.934(c).

<sup>18</sup> Notices of Return.

<sup>19</sup> See RAM Technologies, Inc., *Order on Reconsideration*, 16 FCC Rcd 10919 (WTB PS&PWD 2001).

granting the Petition and reinstating the Renewal Applications. Although Burlington did not timely respond to the Renewal Applications Notices of Return, it has otherwise been diligent in complying with the Commission's rules. For instance, it timely filed its Renewal Applications and Construction Notifications and met the substantial service requirement for the Stations. Thus under these specific circumstances, while we expect Burlington to exercise greater care in the future, we do not believe that Burlington should lose its license for this isolated failure.

6. Another circumstance supporting reinstatement of Burlington's renewal applications is that it is providing educational broadband service to students and faculty. Station WLX608's ten-megahertz link provides Ripton Elementary School its sole access to the Internet and carries all of its voice communications.<sup>20</sup> Station WLX609's twenty-megahertz link is used to connect Isle La Motte Elementary School with the GlobalNet Internet Services network operations center and provides the school with backup redundant Internet access, intra-district communications, and management communications to testing services.<sup>21</sup> Based upon the totality of the circumstances, we conclude that it is in the public interest to grant Burlington's Petition.

7. Burlington is the third EBS licensee who has recently sought relief after having renewal applications dismissed for failing to respond to a notice of return.<sup>22</sup> We remind EBS licensees of the importance of responding to notices of return and all Commission correspondence in a timely fashion. If we find a continuing pattern of EBS applicants failing to respond to Commission correspondence, we reserve the right to conclude that the Commission's interest in ensuring timely responses to Commission correspondence would justify denying relief to EBS licensees who fail to respond to Commission correspondence in the future.

#### IV. CONCLUSION AND ORDERING CLAUSES

8. The decision to dismiss Burlington's Renewal Applications was correct. However, based upon the information provided in the Petition, we have decided to reinstate Burlington's Renewal Applications. Accordingly, we grant the Burlington's petition for reconsideration.

9. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106 the Petition for Reconsideration filed by Burlington College on October 12, 2012 IS GRANTED.

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<sup>20</sup> Petition at 2.

<sup>21</sup> *Id.*

<sup>22</sup> See Garnett Unified School District #365, *Memorandum Opinion and Order*, 27 FCC Rcd 13086 (WTB BD 2012); Somerville Independent School District, *Order on Reconsideration*, 27 FCC Rcd 6063 (WTB BD 2012).

10. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 309, and Section 1.949 of the Commission's Rules, 47 C.F.R. § 1.949, that the Broadband Division SHALL REINSTATE AND PROCESS the applications filed by Burlington College, Burlington, Vermont (File Nos. 0005226033, 0005226029) in accordance with this *Order on Reconsideration* and the Commission's rules and policies.

11. These actions are taken under designated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble  
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